

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

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CC:CORP:4

PLR-147316-10

Date:

May 18, 2011

Legend

Corporation =

Partnership =

Trust =

LLC =

New REIT =

State A =

State B =

Date A =

X Assets =

a =

b =

c =

Dear :

This letter responds to your November 18, 2010 request for rulings on certain federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Corporation is a publicly-traded corporation organized under the laws of State A and the sole general partner of Partnership, a State A limited partnership treated as a partnership for federal income tax purposes. As of Date A, Corporation owned an approximate combined a percent general and limited partnership interest in Partnership. The remaining limited partnership interests in Partnership are owned by unrelated investors.

Partnership owns approximately b percent interest in LLC, a State A limited liability company. LLC is treated as a partnership for federal income tax purposes. LLC holds X Assets located in State B. The remaining membership interest in LLC is owned by Trust, an entity exempt from federal income tax. Partnership and Trust are collectively referred to as the "Partners."

As of Date A, the Partners each have a negative capital account with respect to their interest in LLC. It is anticipated that the Proposed Transaction will generate gains under § 357(c).

Proposed Transaction

For what are represented to be valid business reasons, taxpayer intends to complete the Proposed Transaction as follows:

- (i) Partnership and Trust will transfer their respective interest in LLC to New REIT, solely in exchange for membership interests. New REIT will be formed as a State A limited liability company that will elect to be treated as a

- corporation for federal income tax purposes. Contemporaneously, approximately 120 investors (the "Preferred Shareholders") will transfer cash to New REIT in exchange for a separate class of non-voting preferred interest in New REIT (the "New REIT Formation"). The Preferred Shareholders will hold less than c percent of the total equity value of New REIT. Upon formation, New REIT will elect to be treated as a real estate investment trust ("REIT").
- (ii) Partnership and Trust will transfer their respective interest in New REIT to a newly formed limited liability company ("New LLC") solely in exchange for membership interests in New LLC (the "New LLC Formation"). New LLC will be formed as a State A limited liability company that will be treated as a partnership for federal income tax purposes.

Representations

Taxpayer makes the following representations with respect to the Proposed Transaction:

- (1) In connection with the New REIT Formation, no stock or securities will be issued for services rendered to or for the benefit of New REIT and no stock or securities will be issued for indebtedness of New REIT.
- (2) The Proposed Transaction is not the result of the solicitation by a promoter, broker, or investment house.
- (3) Neither the Partners nor the Preferred Shareholders will retain any rights in the property transferred to New REIT.
- (4) In connection with the New REIT Formation, any liabilities of the Partners to be assumed by New REIT were incurred in the ordinary course of business and are associated with the assets to be transferred. No liabilities of the Preferred Shareholders will be assumed by New REIT.
- (5) In connection with the New REIT Formation, the fair market value of the assets to be transferred to New REIT will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d) and taking in account the application of Rev. Rul. 80-323, 1980-2 C.B. 124) by New REIT. No liabilities owed to New REIT by the Partners or Preferred Shareholders will be extinguished or discharged in connection with the New REIT Formation. No cash or other property (other than property permitted to be received under § 351(a) without the recognition of gain) will be received in the New REIT Formation. Immediately

after the New REIT Formation, the fair market value of the assets of New REIT will exceed the amount of the liabilities.

- (6) There is no indebtedness between New REIT and the Partners and there will be no indebtedness created in favor of the Partners as a result of the New REIT Formation.
- (7) The New REIT Formation will occur pursuant to a plan agreed upon before the transaction in which the rights of the parties are defined.
- (8) There is no plan or intention on the part of New REIT to redeem or otherwise reacquire any membership interest to be issued in the New REIT Formation.
- (9) All exchanges in connection with the New REIT Formation will occur on approximately the same date.
- (10) Taking into account any issuance of additional membership interest in New REIT; any issuance of membership interest for services; the exercise of any rights, warrants, or subscriptions for additional membership interest; a public offering of New REIT membership interest; and the sale, exchange, transfer by gift, or other disposition of any of New REIT membership interest to be received in the exchange, other than the disposition of New REIT membership interest in the New LLC Formation, the Partners and the Preferred Shareholders, will collectively be in "control" of New REIT within the meaning of § 368(c).
- (11) The Partners and the Preferred Shareholders will receive membership interest approximately equal to the fair market value of the property transferred to New REIT.
- (12) New REIT will remain in existence and will retain and use the property transferred in the New REIT Formation in a trade or business.
- (13) There is no plan or intention by New REIT to dispose of the property transferred in the New REIT Formation other than in the normal course of business operations.
- (14) Each of the parties to the Proposed Transaction will pay its own expenses, if any, incurred in connection with the New REIT Formation.
- (15) None of the Partners or Preferred Shareholders are under the jurisdiction of a court in a Title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the membership interests received in the exchange will not be used to satisfy the indebtedness of such debtor.

- (16) New REIT will not be a "personal service corporation" within the meaning of § 269A.
- (17) New REIT will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (18) None of the membership interests to be issued by New REIT is "section 306" stock within the meaning of § 306(c).
- (19) The New LLC Formation will qualify as nontaxable contributions to a partnership under § 721(a).
- (20) New REIT will make a timely and valid election under § 856(c) to be treated as a REIT.
- (21) New REIT will meet the definition of a REIT pursuant to § 856.

Rulings

- (1) Except to the extent that § 357(c) applies, the Partners will recognize no gain or loss in connection with the New REIT Formation (§ 351(a)). Any excess of liabilities assumed by New REIT over the basis of the property transferred will be treated in accordance with § 357(c).
- (2) The New LLC Formation will not cause the New REIT Formation to fail to qualify as a nontaxable transfer to a controlled corporation under § 351(a) (Rev. Rul. 2003-51, 2003-1 C.B. 938).
- (3) No gain or loss will be recognized on the receipt of property in exchange for membership interests in New REIT in connection with the New REIT Formation (§ 1032(a)).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. Additionally, no opinion is expressed (and none was requested) regarding (i) the federal tax classification of any of the entities involved in the Proposed Transaction; (ii) the validity of any entity classification election made with respect to any of the entities; (iii) whether New REIT will qualify as a REIT under part II of subchapter M of the Code; (iv) whether the New LLC Formation will qualify as a tax-free § 721(a) transfer; or (v) the application of § 751 to the Proposed Transaction.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)